Usaha Wawasan Sdn Bhd v Njop ak Kanyan & Ors

HIGH COURT (MIRI) — ORIGINATING SUMMONS NO 24–87 OF 2009(MR)/1
STEPHEN CHUNG JC
21 OCTOBER 2011

Native Law and Custom — Land dispute — Customary rights over land — Whether defendants were in occupation of lands before provisional leases were issued to plaintiff — Whether defendants were in occupation of lands with consent of state — Whether defendants were in occupation with consent of plaintiff — Whether defendants had proven on balance of probabilities that plaintiff had granted them licence to occupy and farm lands — Whether defendants were unlawful trespassers on lands — Sarawak Land Code (Cap 81) s 44

On 8 November 2004, the plaintiff was granted provisional leases in respect of two pieces of land ('the lands'). While visiting the lands in 2005 and later in early 2008, the plaintiff discovered that a portion of the lands had been cleared and farmed by different groups of trespassers. The plaintiff lodged a police report and the police had advised the trespassers to stop trespassing on the plaintiff's land. However, the plaintiff found that the defendants continued to trespass and occupy the lands. The plaintiff thus filed an originating summons ('the OS') pursuant to O 89 of the Rules of the High Court 1980 against the defendants to recover possession of the lands. The court made an order to convert the OS into a writ action. It was the plaintiff's case that the defendants had only occupied and farmed the lands after 2005, ie after the provisional leases were issued to the plaintiff. The defendants claimed that they were part of the 38 families who had occupied the lands prior to 8 November 2004. According to the defendants the Lands and Surveys Department was aware of their occupation of the lands and had advised them to talk and to settle the dispute over ownership of the lands with the plaintiff after the provisional leases were issued to the plaintiff. The defendants also claimed that they were in occupation of the lands with the consent of the plaintiff.

Held, allowing the plaintiff's application with costs to be taxed:

(1) The correspondence between the defendants and the Lands and Surveys Department confirmed that 38 families had settled and farmed on the state land. However, there was no evidence that to show that any of the defendants had occupied settled and farmed on the land which was occupied by the 38 families between July 1999 and 18 February 2004, ie before the alienation of the lands and the issuance of the provisional leases in respect of the lands to the plaintiff (see paras 8–9 & 13).

(2) The defendants had not produced any evidence to show that there was any written or express consent, permission or promise given or made by any Sarawak government departments or agencies or any person in authority, which allowed the defendants to occupy and farm the state land. As such, no consent or acquiescence could arise or should be implied from the defendants' unlawful occupation of the lands. The fact that the Lands and Surveys Department was aware of the defendants' unlawful occupation of the lands but did not act against the defendants did not mean that the department or the Sarawak government had given its consent to their occupation of the lands. This was clear from s 44 of the Land Code. As such, based on the evidence the Sarawak government had not granted the defendants any licence or permission to enter, occupy and farm on the lands before 8 November 2004 (see paras 15–19).

(3) Although the plaintiff's representative, who was authorised to negotiate with the defendants on their occupation of portions of the plaintiff's lands, had made certain proposals to the defendants, these proposals were subject to contract and had to be reduced into an agreement. No such agreement was signed between the plaintiff and the defendants allowing them to occupy the lands. The burden was on the defendants to show that they had a licence or consent from the plaintiff to enter, occupy and farm on the lands after the provisional leases were issued to the plaintiff. However, the defendants had failed to prove on a balance of probabilities that there was such a licence or consent given to them. As such, the defendants were unlawful trespassers on the lands (see paras 23, 25, 29–35).

[Bahasa Malaysia summary

Pada 8 November 2004, plaintif telah memberi pajakan sementara berkaitan dua bidang tanah ('tanah tersebut'). Semasa melawat tanah tersebut pada tahun 2005 dan kemudian pada awal tahun 2008, plaintif mendapati bahawa sebahagian daripada tanah tersebut telah dibersihkan dan didiami oleh kumpulan penceroboh berbeza. Plaintif telah membuat laporan polis dan polis telah menasihatkan penceroboh tersebut memberhentikan pencerobohan mereka ke atas tanah plaintif. Walau bagaimanapun, plaintif mendapati bahawa defendan-defendan terus menceroboh dan menetap atas tanah tersebut. Plaintif dengan itu telah memfailkan saman pemula ('SP') menurut A 89 Kaedah-Kaedah Mahkamah Tinggi 1980 terhadap defendan-defendan untuk mendapat semula pemilikan ke atas tanah tersebut. Mahkamah telah membuat perintah untuk menukar SP tersebut kepada writ tindakan. Adalah kes plaintif bahawa defendan hanya mendiami dan mengerjakan tanah tersebut selepas tahun 2005, iaitu selepas pajakan sementara dikeluarkan kepada plaintif. Defendan-defendan mendakwa bahawa mereka merupakan sebahagian daripada 38 keluarga yang menetap atas tanah tersebut sebelum 8

November 2004. Menurut defendan-defendan Jabatan Tanah dan Kaji Selidik sedar tentang penetapan mereka atas tanah tersebut dan telah menasihatkan mereka untuk berbincang dan menyelesaikan pertikaian hak milik tanah tersebut dengan plaintif selepas pajakan sementara dikeluarkan kepada plaintif. Defendan-defendan juga mendakwa bahawa mereka menetap atas tanah tersebut dengan persetujuan plaintif.

Diputuskan, membenarkan permohonan plaintif dengan kos dikenakan cukai:

(1) Perhubungan antara defendan-defendan dan Jabatan Tanah dan Kaji Selidik mengesahkan bahawa 38 keluarga telah menetap dan mengerjakan tanah kerajaan. Walau bagaimanapun, tiada bukti menunjukkan bahawa mana-mana daripada defendan-defendan tersebut telah menetap dan mengerjakan tanah tersebut yang telah didiami oleh 38 keluarga tersebut antara Julai 1999 dan 18 Februari 2004, iaitu sebelum pemberimilikan tanah tersebut dan keluaran pajakan sementara berkaitan tanah tersebut kepada plaintif (lihat perenggan 8–9 & 13).

(2) Defendan-defendan tidak mengemukakan apa-apa keterangan untuk menunjukkan bahawa terdapat apa-apa persetujuan bertulis atau nyata, kebenaran atau janji diberikan atau dibuat oleh mana-mana jabatan kerajaan atau agensi Sarawak atau mana-mana orang yang berkuasa, yang membenarkan defendan-defendan menetap dan mengerjakan tanah kerajaan tersebut. Oleh itu, tiada persetujuan atau kebenaran mungkin wujud atau tersirat daripada penetapan tidak sah defendan-defendan atas tanah tersebut. Hakikat bahawa Jabatan Tanah dan Kaji Selidik sedar tentang penetapan tidak sah defendan-defendan atas tanah tersebut tetapi tidak bertindak terhadap defendan-defendan tidak bermaksud bahawa jabatan atau kerajaan Sarawak telah memberikan persetujuannya untuk penetapan mereka atas tanah tersebut. Ini adalah jelas dalam s 44 Kanun Tanah. Oleh itu, berdasarkan keterangan kerajaan Sarawak tidak memberikan defendan-defendan apa-apa lesen atau kebenaran untuk memasuki, menetap dan mengerjakan tanah tersebut sebelum 8 November 2004 (lihat perenggan 15–19).

(3) Walaupun wakil plaintif, yang diberi kuasa untuk berunding dengan defendan-defendan berhubung penetapan mereka atas sebahagian tanah plaintif, telah membuat cadangan tertentu kepada defendan-defendan, cadangan tersebut tertakluk kepada kontrak dan telah menjadi perjanjian. Tiada perjanjian telah ditandatangani antara plaintif dan defendan-defendan membenarkan mereka menetap atas tanah tersebut. Beban terletak atas defendan-defendan untuk menunjukkan bahawa mereka mempunyai lesen atau persetujuan daripada plaintif untuk memasuki, menetap dan mengerjakan tanah tersebut selepas pajakan sementara dikeluarkan kepada plaintif. Walau bagaimanapun,

defendan-defendan telah gagal membuktikan atas imbangan kebarangkalian bahawa memang wujud lesen atau persetujuan yang telah diberikan kepada mereka. Oleh itu, defendan-defendan penceroboh yang melanggar undang-undang atas tanah tersebut (lihat perenggan 23, 25, 29–35).]

Notes

For cases on customary right over land, see 10 *Mallal's Digest* (4th Ed, 2011 Reissue) paras 682–711.

Cases referred to

Chew Hock San & Ors v Connaught Housing Development Sdn Bhd [1985] 1 ML J 350, FC (refd)

Choo Chin Thye v Concrete Engineering Products Bhd & other appeals [2005] 4 MLJ 14; [2005] 2 CLJ 323, CA (refd)

Gemencheh Enterprises Sdn Bhd v Aikpoint Development Sdn Bhd [2005] MLJU 412; [2005] 8 CLJ 135, HC (refd)

Heng Wan Co Ltd v Selangor Rice Mill Co Ltd [1967] 2 MLJ 44 (refd)

Lee Beng Lai & Ors v Tetuan Tokoyaki Property Sdn Bhd [2002] 3 MLJ 287, CA (refd)

Lee Chin Kok v Jasmin Arunthuthu Allegakorn & Ors [2000] 4 MLJ 481, SC (refd)

Lembaga Kemajuan Negeri Pahang v D Chandran [2001] 1 CLJ 271, HC (distd)

Lim Keng Siong & Anor v Yeo Ah Tee [1983] 2 MLJ 39, FC (refd)

MHES Sdn Bhd v Kumpulan Suria Sign Sdn Bhd [2002] 7 MLJ 552; [2002] 1 CLJ 359, HC (refd)

Shaheen Abu Bakar v PerbadananS Kemajuan Negeri Selangor [1998] 1 CLJ 74, HC (distd)

Zaibar Auto (M) Sdn Bhd v Shell Malaysia Trading Sdn Bhd [1996] 2 MLJ 221, CA (refd)

Legislation referred to

Rules of the High Court 1980 O 89

Sarawak Land Code (Cap 81) ss 44, 209(1), 209B(1)

SH Lim (SH Lim & Co Advocates) for the plaintiff.

Robert Ayu (Jaini, Robert & Lau Advocates) for the defendants.

Stephen Chung JC:

[1] On 8 November 2004, the plaintiff became the registered owner of two parcels of land situate at Batang Suai, Niah, containing an area of 1,810 hectares and 830 hectares and described as Lot 172 Suai Land District and Lot 173 Suai Land District respectively.

[2] PW1, a director of the plaintiff, said that before August 2005, while visiting the lands, he noticed that there were some people who attempted to trespass and farmed the lands. He said that with the assistance of the police he called them to the Niah police station, told them that the lands belonged to the plaintiff and warned them not to trespass or occupy the lands.

[3] He said that this group of people was led by Tuai Rumah Kallang Jok of Kampung Pasir Puteh, Suai. He said that after they had checked with the Lands and Surveys Department, they wrote a letter dated 14 August 2005 (exh P2) requesting the plaintiff for a portion of the lands to be set aside for them to do their farming. 'PW1' said that another group of trespassers led by a Boniface Bada ak Enjah, calling themselves the Komiti Pemansang Sungai Telong Merah, Suai (KPS), wrote a separate letter dated 7 August 2005 (exh P3) requesting that they be allowed to farm on about 500 acres of the lands. PW1 said that the plaintiff did not reply to both letters as he had made clear to them at the Niah police station the plaintiff's stand against any trespassing of the plaintiff's lands.

[4] After the plaintiff's environment impact assessment report was approved in early 2008, the plaintiff commenced the perimeter survey of the two parcels of land, site preparation and setting up nurseries on the lands. PW1 said that the plaintiff's employees then discovered that a portion of the lands had been cleared, burnt and farmed by different groups of trespassers. PW1 instructed the estate manager to lodge a police report and he said the police had advised the trespassers to stop the trespass. PW1 said that some of the trespassers had left after the police's advice but others had remained on the lands. PW1 said that the plaintiff had identified those who continued to trespass and occupy the lands as the defendants in this action.

[5] On 2 December 2009, the plaintiff filed an originating summons against the defendants to recover possession of the two parcels of land pursuant to O 89 of the RHC. On 21 July 2010, the court made an order to convert the originating summons into a writ action with the affidavits filed by the parties to be treated as the pleadings and the case was set down for trial. The agreed issues for trial are as follows:

(a) whether the defendants were in occupation of the lands before the date of issuance of the provisional leases (8 November 2004);

(b) if the answer to issue (a) is in the affirmative, whether the defendants were in occupation of the lands with the consent of the relevant authority (the State);

(c) whether the defendants were in occupation of the lands after the date of issuance of the provisional leases (8 November 2004);

(d) if the answer to issue (c) is in the affirmative, whether the defendants were in occupation of the lands with the consent of the plaintiff; and

(e) whether the defendants are illegal squatters on the land and whether the plaintiff is entitled to the reliefs sought for.

[6] In respect of issue (c), the parties have agreed that all the defendants were and are in occupation of the two parcels of land after the provisional leases were issued to the plaintiff on 8 November 2004. The first issue for trial is whether the defendants were in occupation of the lands prior to 8 November 2004.

[7] From the above evidence of PW1, before August 2005, some people attempted to trespass and to farm the lands but had moved out after the plaintiff had lodged a police report and the police had spoken to these people not to trespass the lands. In 2008, the plaintiff discovered that the defendants had occupied and farmed on portions of the lands. In other words it was the plaintiff's case that the defendants had only occupied and farmed the lands in 2005 and thereafter, after the provisional leases were issued to the plaintiff.

[8] The first defendant ('DW1') represented and gave evidence on behalf of all the defendants. He said that in July 1999, Tuai Rumah Indi Ak Generang on behalf of the residents of Rumah Indi at Pasir Puteh, Suai applied to the lands and surveys for a parcel of land at Sg Suai along the Miri-Bintulu Road for them to plant oil palms. He said he did not have a copy of this letter but that the lands and surveys replied to their application vide a letter dated 22 April 2000 (exh D1) requesting for a plan of the area applied for. He said that TR Indi followed up on their application vide a letter dated 21 November 2002 (exh D2) which stated that they had already settled and farmed on the land which they had applied for.

[9] He said that after TR Indi passed away, his son-in-law TR Kallang wrote another letter dated 2 July 2002 to the lands and surveys. This letter was not exhibited. There was another letter from TR Kallang dated 18 February 2004 (exh D3) addressed to the lands and surveys again applying for the land and stating that the inhabitants of Kpg Pasir Putih Suai comprising of 38 families had with the advice and encouragement of various government agencies started a scheme *kelompok kelapa sawit*.

[10] DW1 said that another group of people under TR Bada applied for an adjacent parcel of land inside Lot 172 and Lot 173 to plant oil palms. This letter was also not exhibited. He said that after negotiation between the two groups, they agreed to come together and formed Skim Kelompok Kelapa Sawit Sungai Telong, Suai (the Scheme) on the lands being now situate on both

sides of the Miri-Bintulu Road, between the Suai Bridge and Sungai Telong. The Scheme now consisted of 72 families and covered 933 hectares (see exhs D4, D5, D6).

[11] Both exhs D2 and D3 did not set out the names or identified the 38 families who had settled and farmed on the lands. They also did not provide any map or particulars on the locality and size of the respective plots of land occupied and farmed by each of the 38 families. There was no evidence that the 38 families included any of the present 46th defendants.

[12] The letter dated 14 August 2005 (P2) set out the names of the 35 occupiers on the lands who had purportedly occupied the lands since 1979. Only ten of these occupiers are among the present defendants in this action. However, the letter also advised that they only occupied the lands as shown in a plan attached to the letter (see p 65 PBOD) after the Miri-Bintulu coastal road was constructed. These areas were different from the areas previously occupied by the 38 families.

[13] From the above evidence, between July 1999 to 18 February 2004, 38 families had occupied, settled and farmed on the state land at Pasir Putih Suai, Sg Suai. They were led by TR Indi who was succeeded by TR Kallang. The correspondence between them and the lands and surveys confirmed these facts. There was no evidence to show that any of the defendants had occupied, settled and farmed on the land which was occupied by the 38 families between July 1999 and 18 February 2004 ie before the alienation of the lands and the issuance of the provisional leases in respect of the two parcels of land described as Lot 172 and Lot 173 to the plaintiff on 8 November 2004.

[14] Even assuming that all the defendants were part of the 38 families or had occupied the two parcels of land prior to 8 November 2004, did they occupy the land with the consent of the relevant State authorities? DW1 said that between 1999 and 2002, the lands and surveys was aware of their occupation of the lands and had advised them to talk and to settle the dispute over ownerships of the lands with the plaintiff after the provisional leases in respect of the lands were issued to the plaintiff.

[15] The defendants did not produce any evidence to show that there was any written or express consent, permission or promise given or made by any Sarawak Government departments or agencies or any person in authority to them to occupy and farm the state land. From exhs D1, D2 and D3, it was apparent that after 21 July 1999, the Lands and Surveys Department was aware that a group of people led by TR Indi had settled and farmed on the state land applied for by them. This was reinforced by two subsequent letters dated 21 November 2002 from TR Indi and dated 18 February 2004 from TR

Kallang addressed to the lands and surveys confirming that a total of 38 families had settled and farmed on the land at Pasir Putih Suai, Sg Suai.

[16] Section 209(1) of the Land Code provides that any person who without lawful authority occupies, clears or cultivates any state land shall be guilty of an offence. Under s 209B(1) any such person may be removed from the land and any building erected thereon may be demolished.

[17] It was contended that for many years the Lands and Surveys Department was aware of their unlawful occupation of the state land at Pasir Putih Suai but did nothing about it. Notwithstanding the provisions in the Land Code regarding such unlawful occupation, between 1999 and 2004, no action was taken by the Sarawak Government or any of its departments or agencies against TR Indi or TR Kallang and the 38 families in respect of their unlawful occupation of the state land. It was submitted by the defendants that this amounted to an implied consent or acquiescence by the Sarawak Government to their occupation of the land, referring to the case of *Lembaga Kemajuan Negeri Pahang v D Chandran* [2001] 1 CLJ 271 and *Shaheen Abu Bakar v Perbadanan Kemajuan Negeri Selangor* [1998] 1 CLJ 74.

[18] These two cases can be distinguished on their facts. In *Lembaga Kemajuan Negeri Pahang v D Chandran*, the defendant's initial entry on to the land was with the express consent of the state authority ie under a temporary occupation licence. After the TOL expired, he continued to pay assessment on the land and it was held that it amounted to an implied consent to occupy the land. In the case of *Shaheen Abu Bakar*, although the initial entry of the defendants was unlawful, the *Menteri Besar* approved the renovation of their surau, provided them with water supply, roads and a community hall and it was held that the defendants occupied the land with the acquiescence of the state authority.

[19] In our case, there was no promise made or any assistance given by the state authority to the defendants and no consent or acquiescence could arise or should be implied on their unlawful occupation of the two parcels of land. s 44 provides that no person shall acquire any right or title against the government by virtue of any adverse possession or unlawful occupation of state land. The fact that the lands and surveys did not act against the defendants could not mean that it or the Sarawak Government had given its consent to their occupation of the lands, in view of the clear provision of s 44 of the Land Code.

[20] DW1 said that with the support of the District Office at Niah and the community leaders, they had applied for a balai raya to be built at the scheme and that the District Office at Niah and the community leaders had recommended that the land on which the *balai raya* was to be built be given to

them for that purpose. He said that their application to build the *balai raya* was approved by the District Office at Miri and it was built in 2009, although there was no reply from the lands and surveys regarding their application for the land on which the *balai raya* was built (see exhs D12, D13, D14 and D15).

[21] ('PW3'), the general manager of Tradewinds Plantation Bhd (Tradewinds) which was the joint venture partner of the plaintiff, said that in April 2009 DW1 approached him and asked him to sign a letter to support their application for the balai raya. PW3 said that he refused to sign as he had no authority to sign such a letter as the *balai raya* would be built on the plaintiff's land.

[22] Although the District Office at Miri had approved the defendants' application and disbursed a grant to them to build the *balai raya*, that could not amount to a consent to the defendants to occupy the lands because by that time the lands were already registered in the name of the plaintiff. By that point in time, only the plaintiff as the registered owner could give the consent to the defendants to build the balai raya on the lands. On the evidence, no such consent was given by the plaintiff to the defendants.

[23] The next issue is whether the defendants were in occupation of the lands with the consent of the plaintiff after the provisional leases were issued. DW1 said that the plaintiff and the defendants had a dialogue on 28 December 2008. He said that the plaintiff was represented by Stanley Oscar Bryan Ak Suntal ('DW5') and Jonathan Tinggom Entrie. The letter of authorisation was exhibited as P12. He said that DW5 told the defendants at the dialogue that they should not increase the areas already farmed by them but that they could continue to farm their respective plots of land for a period of not more than 60 years, that is to say for the duration of the two provisional leases which were issued to the plaintiff for 60 years, provided that all the fresh fruit bunches harvested from the farms must be sold to the plaintiff. The minutes of this meeting was exhibited as P11.

[24] DW1 said that they continued to occupy and farm the lands based on the representation of DW5. DW1 said that contrary to what DW5 had told them, the plaintiff's contractor or agent had commenced to clear some of the farms occupied by them to construct roads and drains without their consent. He said that the roads and drains were constructed as a boundary between the lands occupied by them and the plaintiff's lands.

[25] The plaintiff denied that it had authorised DW5 to act and negotiate on its behalf with the defendants. In particular, the plaintiff denied that it had authorised DW5 to make the proposals or promises to allow the defendants to continue to occupy and farm the lands for a period of not more than 60 years

provided the defendants sold all the fresh fruit bunches harvested from their farms to the plaintiff. PW4, the senior manager of the plaintiff, explained that he gave P12 to DW5 because DW5 told him that DW5 had good political connections and would be able to bring the defendants to the negotiating table with the plaintiff. He explained that P12 was given to DW5 for that limited purpose only ie to enable DW5 to bring the defendants to the negotiating table and not to enable him to negotiate on behalf of the plaintiff.

[26] PW3 said that the request by the defendants to enable them to build the balai raya on the plaintiff's lands was discussed at a meeting of the joint venture partners. He said that during the meeting a copy of the minutes of meeting which is P11 was shown and they were shocked to see the contents of P11 which allowed the defendants to continue to occupy and farm the lands. He said that DW5 was not authorised by the board of directors to make such a representation and he (PW3) was instructed to write a letter to DW5 to protest the representation made. This letter was exhibited as P13, dated 26 May 2009, addressed to DW5 and signed by PW3 on behalf of Tradewinds.

[27] In para 3 of the letter, it was stated that 'Our company did not and has not given you any authority to meet the squatters in our absence. Further, our company has never authorized you to make any promises or agreement with the said squatters affecting our Land'. It added that the promise was made without their knowledge or consent. It was submitted that the proposals or promises were not binding on the plaintiff: see *Chew Hock San & Ors v Connaught Housing Development Sdn Bhd* [1985] 1 ML J 350, *Heng Wan Co Ltd v Selangor Rice Mill Co Ltd* [1967] 2 MLJ 44.

[28] It is to be noted that the letter of authorisation P12 dated 13 December 2008 was written on the plaintiff's letterhead and signed by PW4 as its senior manager on behalf of the plaintiff. It was titled 'Usaha Wawasan Sdn Bhd Authorized Representative' and it stated 'that Encik Stanley Oscar Bryan A/k Suntal /Dato Dr Anthony Nait has been authorized to represent on behalf Usaha Wawasan Sdn Bhd to handle and act as negotiator on land matters.' Reading P12, it clearly stated that DW5 was authorised to represent the plaintiff to handle and act as negotiator on land matters. There was no restriction or any limitation on the powers or authority of DW5 to represent and negotiate on behalf of the plaintiff contained in P12.

[29] The letter did not state that he was only authorised to bring the defendants to the negotiating table. It did not state that he was not authorised to meet with the defendants in the absence of any representatives from the plaintiff or from Tradewinds. It did not state that he was not authorised to make any promise or agreement affecting the land. Reading P12, and on the facts of this case, DW5 was for all intents and purposes authorised to represent

the plaintiff to handle and negotiate with the defendants on their occupation of portions of the plaintiff's lands. The plaintiff had represented to the defendants that DW5 had such authority. The defendants being outsiders and dealing with the plaintiff or the plaintiff's representative in good faith were entitled to assume that DW5 was properly appointed by the plaintiff *Gemencheh Enterprises Sdn Bhd v Aikpoint Development Sdn Bhd* [2005] MLJU 412; [2005] 8 CLJ 135, *Choo Chin Thye v Concrete Engineering Products Sdn Bhd & other appeals* [2005] 4 MLJ 14; [2005] 2 CLJ 323.

[30] What did DW5 promise or propose to the defendants on behalf of the plaintiff? the proposals were contained in the minutes of meeting (P11) which was signed by DW1 on behalf of the defendants, by DW5 on behalf of the plaintiff and witnessed by Temenggong Atong, who was not called as a witness by either party. The proposals made by DW5 as contained in para 1.3 of the minutes stated that the defendants under the auspices of the scheme were allowed to continue to cultivate the lands on a as it is basis in accordance to the terms of the provisional leases which would expire in 60 years. The proposal was subject to the following conditions contained in para 1.3.1, 1.3.2, 1.3.3 and 1.3.4 of the minutes:

> 1.3.1 the Defendants were allowed to acquire 'temuda' on the lands which has been cleared of timber;
>
> 1.3.2 no further expansion than what has been allocated;
>
> 1.3.3 the FFB from the Defendants' farms could only be sold to the Plaintiff's factories;
>
> 1.3.4 the premium on the provisional leases would be paid by the Plaintiff;

[31] In para 2.5 of the minutes, it stated that the committee of the scheme would meet to consider the proposals and to prepare an agreement subsequently. The minutes went on to say in para 3.1 that the proposal was considered the best solution to resolve the issue affecting Lots 172 and 173 and it was hoped that both sides would agree to the proposals. Paragraph 3.4 stated that when the agreement had been prepared and agreed upon later, both parties might want to discuss assistance for fertilisers and pesticides loans to the defendants.

[32] From the above paragraphs of the minutes prepared by the defendants it was obvious that DW5 had made certain proposals in respect of the lands to the defendants during the meeting subject to an agreement to be signed between the parties. The proposals were to be considered and approved by the defendants and to be reduced into an agreement to be prepared by or on behalf of the defendants. In other words, the proposals were subject to contract. The minutes recorded and formed the basis of the negotiations between the

plaintiff and the defendants but did not constitute an agreement between them *MHES Sdn Bhd v Kumpulan Suria Sign Sdn Bhd* [2002] 7 MLJ 552; [2002] 1 CLJ 359. See *Lim Keng Siong & Anor v Yeo Ah Tee* [1983] 2 MLJ 39, *Lee Chin Kok v Jasmin Arunthuthu Allegakorn & Ors* [2000] 4 MLJ 481. From the evidence before the court, the defendants did not confirm the proposals nor reduce the proposals into an agreement. No such agreement was signed between the plaintiff and the defendants allowing them to occupy and farm the lands.

[33] The burden was on the defendants to show that they had a licence or consent from the plaintiff to enter, occupy and farm on the lands after the provisional leases were issued to the plaintiff. On the evidence before the court, the defendants had failed to prove on a balance of probabilities that there was such a licence or consent given to them.

[34] From the evidence, the Sarawak Government did not grant any licence or permission to the defendants to enter, occupy and farm on the two parcels of land before 8 November 2004. After the two parcels of lands were alienated to and registered in the name of the plaintiff, the plaintiff as the registered owner of the lands did not give any licence or permission to the defendants to enter, occupy and farm on the two parcels of land. Therefore the defendants were and are unlawful trespassers on the lands *Zaibar Auto (M) Sdn Bhd v Shell Malaysia Trading Sdn Bhd* [1996] 2 MLJ 221, *Lee Beng Lai & Ors v Tetuan Tokoyaki Property Sdn Bhd* [2002] 3 MLJ 287.

[35] For the reasons given, I allow the plaintiff's prayer to recover possession of Lot 172 Suai Land District and Lot 173 Suai Land District with costs to the plaintiff to be taxed.

Plaintiff's application allowed with costs to be taxed.

Reported by Kohila Nesan